Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of the People of the	)	
State of California and the	)	
Public Utilities Commission of	)	
the State of California	)	PR Docket No. 94-105
Requesting Authority to	)	
Regulate Rates Associated	)	
With the Provision of Cellular	)	
Service Within the State	)	
of California	)	

CONSOLIDATED REPLY OF GTE SERVICE CORPORATION, ON BEHALF OF ITS TELEPHONE AND PERSONAL COMMUNICATIONS COMPANIES, TO CERTAIN COMMENTS IN SUPPORT OF THE PETITION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA REQUESTING AUTHORITY TO REGULATE RATES ASSOCIATED WITH THE PROVISION OF CELLULAR SERVICE WITHIN THE STATE OF CALIFORNIA

GTE SERVICE CORPORATION
ON BEHALF OF ITS TELEPHONE
AND PERSONAL COMMUNICATIONS
COMPANIES

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Table of Contents

SUMMARY

GTE Service Corporation ("GTE"), on behalf of its Telephone and Personal Communications Companies, hereby replies to certain comments ("Supporting Comments") in Support of the Petition of the People and Public Utilities Commissions of the State of California ("CPUC") for Authority to Regulate Cellular Rates. The Supporting Comments are a conglomeration of arguments proffered in self-interest, without regard to their impact upon the public interest or the goals set forth by Congress and the FCC. None of them offer reliable hard evidence supporting the CPUC's attempt to demonstrate the need for state rate regulation.

Instead of addressing issues germane to the task at hand, some cellular agents improperly attempt to bring private contractual issues before the FCC. Their allegations regarding cellular rates are merely a front to disguise their true concern: the new competition which they are facing from high volume agents. The FCC is not the proper forum for such concerns.

Resellers support continued regulation as they stand to benefit directly from certain CPUC policies. They seek the continuation of mandatory wholesale/retail margins, despite the fact that the FCC has consistently rejected the imposition of such margins. They allege that their profits are minimal and place the blame for their performance on

facilities-based carriers rather than on their own inefficiency and failure to distinguish their service offerings.

Non-cellular CMRS providers urge that state rate regulation, if continued at all, be imposed solely upon cellular carriers. Such disparate regulatory treatment flies in the face of the goals of regulatory parity for similar services. Suggestions for regulatory policy which so blatantly contradict the intent of Congress and the FCC must be rejected. Thus, agents, resellers and non-cellular competitors are simply attempting to use the CPUC to shield them from the sort of competition which has already led to vigorous promotional offerings by cellular carriers in an attempt to win customers.

Certain California organizations support continued rate regulation in the hope that rates will decrease, despite the fact that the alleged ills of which they complain have apparently not been remedied by the existing regulatory regime. The evidence shows that even limited freedom from regulatory shackles has stimulated greater competition in price and service offerings in California. Continued regulation is the problem, not the solution.

GTE respectfully submits that state rate regulation is not necessary because the CMRS market, of which cellular is one component, is competitive. Cellular service has been characterized by the proliferation of customer-driven rate

plans, consistent decreases in rates for service, increases in coverage area, enhancement of service quality and the introduction of innovative technology and features. This is reflective of an industry in which carriers compete to attract and retain customers. This interaction occurs between facilities-based cellular carriers, resellers, and other CMRS providers. The continuation of costly and unnecessary regulatory burdens upon California cellular carriers will distort the mechanics of the market, produce an artificial barrier to competition, and preclude the beneficial effects of the competitive interplay among all CMRS providers.

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GTE Service Corporation ("GTE"), on behalf of its Telephone and Personal Communications Companies, hereby submits its Consolidated Reply to Comments filed by eleven interested parties on September 19, 1994, with respect to the captioned Petition of the State and Public Utilities Commission of California ("California Petition"). GTE maintains that no party has presented conclusive evidence showing that either (i) market conditions fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory or (ii) that CMRS is a replacement for landline telephone service for

a substantial portion of the telephone landline exchange service within California as required by the OBR to justify continuation of state rate regulation.[1]/

Introduction

The California Petition engendered a considerable volume of participation by interested parties. No less than nineteen Commenters, including GTE, submitted Comments. The Comments fell into four broad groups. The cellular carriers and their associations unanimously opposed the California Petition, tendering: (1) a number of detailed, independent studies which demonstrated the competitiveness of the cellular market and (2) factual data which sharply rebutted the California Public Utilities Commission's ("CPUC's") assertions about historical trends in cellular rates.[2]/ A second group, consisting of cellular agents, resellers, and their associations, supported the California Petition, claiming that the cellular market is not competitive, however, they offered

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[1]/ Omnibus Budget Reconciliation Act of 1993 ("OBR"), 47 U.S.C. § 332(c)(3)(A)(i)-(ii).

[2]/ This group includes GTE, Air Touch Communications, Bakersfield Cellular Telephone Company, Bay Area Cellular Telephone Company, Cellular Carriers Association of California, Cellular Telecommunications Industry Association, Los Angeles Cellular Telephone Company, McCaw Cellular Communications, Inc., and U S West Cellular of California.

no factual or other support for their position.[3]/ A third group of Commenters, non-cellular Commercial Mobile Radio Service ("CMRS") providers, generally opposed continued state regulation but urged that, if state rate regulation is continued, the non-cellular CMRS providers should be exempt.[4]/ Finally, three California organizations generally supported the California Petition in the hope that continued regulation would somehow result in lower rates.[5]/ As plainly stated in its Comments filed September 19th, GTE vigorously opposes the continuation of rate regulation in California. Regulation has imposed unnecessary costs on carriers, burdened and constrained competitive activity, and generally has not served the public interest. The Comments of the various groups arguing in favor of the California Petition and state rate regulation for cellular carriers ("Supporting Commenters") will be addressed here in consolidated fashion to avoid redundancy.

Before addressing specific points raised by these

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[3]/ This group consists of Cellular Agents Trade Association ("CATA"), National Cellular Resellers Association ("NCRA"), and Cellular Resellers Association, Inc./Cellular Service, Inc/Comtech, Inc. (collectively "CRA").

[4]/ American Mobile Telecommunications Technologies Corp. ("AMTA"), E.F. Johnson Co., Mobile Telecommunications Technologies Corp. ("MTel"), Nextel Communications ("Nextel"), Paging Network, Inc. and Personal Communications Industry Association comprise this group.

[5]/ County of Los Angeles ("L.A. County"), Utility Consumers Action Network ("UCAN") and Towards Utility Rate Normalization ("TURN") make up this group.

Supporting Commenters, three general observations are in order. First, each of the Supporting Commenters complains bitterly about perceived problems in the current cellular marketplace. They complain, for example, that rates are too high, that competition is not meaningful, that reseller margins are too small, and that discount mass marketers are squeezing out traditional agents as distribution outlets for cellular services. Yet they all conclude that a continuation of the present regulatory regime -- the very regulatory regime under which all the alleged ills of which they complain have developed -- is desirable. Given that the vast majority of states either have not experienced the problems which the Supporting Commenters allege exist in California or have seen no basis to seek regulatory authority to address such problems, it would appear that the rate regulation which now prevails in California is itself the problem, not the solution.

Second, it is noteworthy that each of the Supporting Commenters looks to state regulation to enhance its own business or competitive position vis a vis the cellular carriers. This kind of self-serving maneuvering demonstrates exactly what is wrong with rate regulation in general and as currently practiced in California. Competitors of cellular carriers as well as each participant in the cellular distribution chain, from top to bottom, attempt to use the regulatory power of the CPUC to distort the normal functioning

of the cellular marketplace to their own business advantage. The CPUC is then placed in the position of determining which group or firm should receive the benefit of the regulations thus distorting the workings of the marketplace. By injecting distortions into the CMRS marketplace, the CPUC can and does promote the profitability of certain CMRS providers. This distortion cannot persist in the long run as new competitors enter the market. Such distortion also deprives the public of the benefits of unfettered competition.

Third, a number of the Supporting Commenters argue in favor of continued CPUC regulation because they support specific regulations or policies which the CPUC has implemented or is considering implementing.[6]/ These considerations, while obviously important to those who stand to benefit most from the CPUC's policies, are wholly irrelevant to the FCC's task at hand. The only issue relevant in assessing a petition for continued state regulation is the ability of the market conditions in the state to protect consumers. Communications Act, § 332(c)(3)(A); 47 U.S.C. § 332 (c)(3)(A).

Finally, GTE strongly objects to the unilateral release of proprietary and confidential information on September 13, 1994, in violation of the protective order entered by the CPUC on the finding of its ALJ on July 19,

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[6]/ For example, the mandated wholesale/retail margin and the unbundling of rate elements in order to permit resellers to utilize their own switches.

1994. Accordingly, GTE will not comment on that material here.

I. The Cellular Market is Competitive

A number of Supporting Commenters assert, in general terms, that the cellular market is not competitive and that this alleged lack of competition justifies continued rate regulation in California. By force of repetition, the Supporting Commenters apparently hope to convince both themselves and others that their mere allegations are facts. Not a single Supporting Commenter submitted any hard evidence or data whatsoever to support its contentions. Supporting Commenters provided only anecdotal and often patently erroneous information. UCAN and TURN, for example, complain that the CPUC's 1993 policy change granting carriers greater flexibility in rate matters resulted in no "meaningful" or "sustained" rate reductions. UCAN/TURN Comment at pp. 2-3. Yet UCAN and TURN themselves acknowledge that when given even a small measure of freedom to compete on price, the carriers, including GTE, initiated a "flurry" of promotional offerings and rate reductions. For example, as GTE stated in its Comments to the California Petition, Contel Cellular Inc. has reduced the Basic, Security Plan, Executive Plan, VIP Rate and

Basic Plus Rate in the Fresno MSA,[7]/ and GTE Mobilnet lowered rates by increasing included minutes by 100 on two of its top rate plans.[8]/ This intense competition -- designed to attract and retain customers -- is exactly what freedom from regulatory constraint should stimulate. Yet UCAN and TURN somehow view this fierce competition between the carriers (which has directly benefitted the subscribing public) as evidence of a lack of competition. To the contrary, UCAN and TURN's example proves precisely why competition in California can be enhanced by freeing cellular carriers from regulatory shackles.

In lieu of actual facts, UCAN hypothesizes that the cellular carriers will engage in rating strategies similar to those experienced when cable operators anticipated the introduction of competitive video services. (UCAN Comments at p. 3). What UCAN overlooked, of course, is that cellular carriers not only compete against each other but against other CMRS providers. (See Section V, infra). Unlike a cable television monopoly, cellular carriers simply do not have the marketplace freedom to raise rates at will.

L.A. County at least attempted a theoretical analysis of the cellular marketplace. (L.A. County "Comments"

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[7]/ Fresno MSA Limited Partnership, Schedule Cal. P.U.C. No. 2-T. GTE Comments at pp. 31-32.

[8]/ GTE Mobilnet of California, Limited Partnership, Schedule Cal. P.U.C. No. 6-T; GTE Mobilnet of Santa Barbara Limited Partnership, Schedule Cal. P.U.C. 6-T. GTE Comments at p. 32.

in I.93-12-007 at p. 19, submitted with its FCC Comment). This analysis is flawed at the outset because it assumes that cellular does not face competition because of its duopoly market structure. In fact, as the FCC has found, cellular is just one service in a matrix of CMRS offerings which compete among each other.[9]/ Moreover, L.A. County notes that in a two-carrier market, one theoretical scenario is aggressive competition by the two competitors. Indeed, the FCC originally established a dual carrier cellular market structure specifically to stimulate competitive interaction between the "A side" and "B side" carriers. An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, 86 F.C.C. 2d 469, 476-77, 482-86 (1981). As noted above, price cutting in the form of promotional offerings and discounted rate plans has in fact occurred in California to the extent that the CPUC has afforded the carriers rate flexibility. Price-cutting by carriers would almost certainly have been even more expansive but for the distortions imposed

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[9]/ Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services; Amendment of Part 90 of the Commission's Rules top Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; and Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, Third Report and Order, GN Docket No. 93-252; PR Docket No. 93-144; PR Docket No. 89-553, released September 23, 1994, para. 43.

by current state regulation.

In contrast to the casual and unsupported bromides about the lack of competition offered by the Supporting Commenters, the cellular carriers submitted detailed facts on trends in cellular rates and independent studies on the status of competition in the industry. GTE, McCaw Cellular Communications, Inc. ("McCaw") and the Cellular Carriers Association of California ("CCAC") submitted comparisons of rates in various usage categories over the last four to five years, (GTE Attachment B; McCaw Comment, Exhibit B; CCAC, Appendix B) and also cited various studies which analyzed cellular rate trends (e.g., Stanley M. Besen, "Concentration, Competition, and Performance in the Mobile Telecommunications Services Market," Charles River Associates, 1994; Stanley M. Besen, Robert J. Larner, and Jane Murdock, "The Cellular Service Industry: Performance and Competition," Charles River Associates, 1992; and U.S. General Accounting Office, Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry, 1992). These studies indisputably demonstrate that cellular rates have decreased across the board while carriers have simultaneously continued to increase coverage areas and improve service quality. In addition, the carriers proffered an array of respected market analysts, all of whom agreed that the cellular market was not only competitive now but will likely become more competitive in the future. Id., see also Robert F. Roche, "Competition

and the Wireless Industry," and Affidavit of Jerry A. Hausman, United States v. Western Elec. Co., Civil Action No. 82-0192 (1994). The FCC, itself an expert agency, concurs with the carriers and the independent analysts: "[T]here is sufficient competition in this [cellular] marketplace to justify forbearance from tariffing requirements." Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd. 1411, 1478-79 (1994); See also, Craig O. McCaw and AT&T, Memorandum Opinion and Order, File No. ENF-93-44; released September 19, 1994, para. 41. The vast weight of authority, therefore, supports a finding that the cellular marketplace is indeed competitive, protecting consumers from unjust/unreasonable and/or unjustly/unreasonably discriminatory rates.

II. Resale Will Not Be Eliminated In the Absence of CPUC Intervention

CRA argued that, in the absence of CPUC imposed margins, the rates charged to resellers would increase and the competition afforded by resellers would "evaporate." CRA states -- without a supporting declaration -- that resellers operate "with extremely small profit margins -- in some cases as low as one percent (1%)." CRA Comments at p. 3. CRA fails to point out that the efficiency of the reseller is indicative of its profit level. What is unclear is why the CPUC, or any

governmental agency, should feel it desirable to increase the profits of a particular class by mandating a wholesale margin.

Significantly, the FCC itself has consistently rejected all attempts by resellers to impose a mandatory wholesale margin on cellular carriers. See, Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, 6 FCC Rcd. 1719, 1724 (1991). The FCC has correctly reasoned that it is not in the business of guaranteeing profitability to any player in the telecommunications marketplace. Id. The Commission has taken this firm position despite its staunch support for resale as a mechanism for making bulk carrier discounts more generally available. See, Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 298 (1976). Here the Supporting Commenters are essentially asking the FCC to impose indirectly, via the CPUC, a structural requirement which the FCC has consistently rejected as contrary to the public interest. There is certainly no basis in this record for the FCC to revise its long held and consistently applied policy.

It is no surprise, of course, that California resellers want to maintain the huge discount which they receive, by CPUC fiat, from the cellular carriers. Unlike the cellular carriers, who have risked and invested hundreds of millions of dollars in cellular plant, resellers take the fruits of cellular carriers' efforts and merely slap their

logo on top of it. The greater the discount which cellular carriers must give to resellers, the greater the profit the resellers can pocket. There is no requirement whatsoever that California resellers pass on all or any of their discount to the consuming public, and the resellers have not shown any willingness to part with any of their margin.[10]/ Simply stated, the CPUC has conferred the opportunity to earn profits on a particular class of cellular retailers without any identifiable benefit to the consuming public.

That having been said, GTE must note that the FCC's strict prohibitions of restrictions on resale have been, and will continue to be observed. These same prohibitions apply in every state. In many states in which GTE operates, there is resale activity. This activity occurs through the normal operation of the marketplace without the intervention of state regulatory bodies. Because resale activity occurs in many other states without state regulation, there is no reason to conclude that resellers will "evaporate" from the California cellular distribution scene. At most they will simply have to operate within the boundaries of economic reality, like other resellers in other jurisdictions.

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[10]/ As GTE noted in its Comments to the California Petition: " ... resellers have not maintained market share because they have consistently failed to utilize their guaranteed margin to offer customers either unique service packages or reduced rates for service." GTE Comments at p. 18.

III. Agents' Allegations are Untrue and Represent an Attempt to Bring Private Contractual Matters Before This Commission

CATA, an organization representing companies which distribute cellular service as agents for cellular carriers, complains about cellular rates. Their complaint apparently turns on their contention that reduced rates would produce a corresponding increase in subscribership, generating greater agent commissions. CATA Comments at p. 3. It is, of course, left unstated by CATA why either the CPUC or the FCC should be fashioning policy to protect or enhance agent commissions.[11]/ Significantly, CATA's Comments confirm that fierce promotional competition is taking place between cellular carriers in an effort to attract customers. (CATA Comments at p. 4). Instead of recognizing efforts for what they are -- efforts to gain new customers and direct responses to competition which benefit consumers -- CATA chooses to dub them "smoke signals." In fact, as noted above, it is the tariff filings required by the CPUC which send very clear "smoke signals" not only to cellular competitors but to other CMRS competitors as well, retarding or eliminating bona fide efforts to achieve a

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[11]/ It appears that CATA is attempting to disguise its concerns with respect to private contractual issues as FCC-related issues. However, the Commission has long held that the courts are the appropriate forum for such disputes. See, Rodney A. McDaniel, 4 FCC Rcd. 1736 (CCB 1989); Robert J. Kile, 3 FCC Rcd. 1087 (1988).

competitive advantage.[12]/ There are several additional points raised by CATA which merit brief rejoinder.

CATA states, without attestation, that "for 10 years there has been lower costs and expenses for providing [cellular] service" without any "reductions of consequence" in basic service rates.[13]/ (CATA Comments at p. 4). This is simply false. Cellular carriers, including GTE, have invested huge sums in expanding the coverage and capacity of their systems. As the CPUC itself is aware, GTE Mobilnet partnerships added 51 new cells between January 1992 and December 1993. CATA has no apparent conception of the financial commitment involved in expanding and improving cellular service. While CATA grudgingly admits that the promotional offerings and programs introduced by cellular carriers "offer some rate benefits," it selectively ignores the fact that basic cellular rates, while remaining relatively constant in nominal terms, have consistently declined in real terms.

CATA's contention that elderly and handicapped subscribers are adversely affected by current cellular price policies is a manifestation of twisted logic, at best. In one breath, CATA asserts that cellular service is unaffordable for

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[12]/ See also Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, (Second Report and Order), 9 FCC Rcd. 1411, 1479 (1994).

[13]/ GTE pointed out in its September 19, 1994 Comments the flaws of focusing on basic rates.

such customers at current rate levels. In the next breath, however, CATA alleges that reduced rate plans offered to the elderly and handicapped operate as a disincentive for agents who they allege would be earning less in terms of their commissions if they were to target these customers. The key point here is not that CATA's commissions are too low but that cellular carriers have in fact introduced many rate plans in recent years tailored to the needs of low-end cellular users.

CATA suggests that traditional cellular agents are being squeezed out of the business by "preferred retailers" who are mass marketers and who bundle service and equipment. First, GTE does not sanction bundling by any of its agents in California -- mass market or otherwise. Although the FCC has found that bundling is in the public interest, the CPUC has ruled otherwise. In California, therefore, GTE scrupulously adheres to the anti-bundling rules. CATA's unsubstantiated innuendo in this regard is not deserving of consideration. Second, CATA's claim that traditional cellular agents are being "driven under" by some sinister "game plan" of the cellular carriers is absurd. In the final analysis, CATA is seeking to be insulated from competition by large discount chains which can distribute cellular service and equipment in large volumes.

Finally, CATA urges that cellular switches be unbundled from the RF portion of the cellular transmission

path.[14]/ This is, of course, one of the issues on which the FCC has invited and received Comments in Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54; RM 8012, released July 1, 1994. Thus, consideration of this issue is both inappropriate and unnecessary in this proceeding.

IV. User Groups Seek Preferred Treatment from CPUC

L.A. County, a large cellular user in California, and UCAN/TURN, organizations of consumers, argue in favor of lower rates for themselves and their constituent members.[15]/ The Supporting Commenters state that the current regulatory approach has not lead to decreased rates. Their solution nonetheless is "more of the same" regulation by the CPUC rather than permitting the sort of unfettered, vigorously competitive market which has led to lower rates in other states. Even while they say that California has the highest rates in the country, they fail to acknowledge that California has the most stringent regulations.

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[14]/ L.A. County also urged the CPUC to take this position and, therefore, indirectly, for the FCC to subscribe to it.

[15]/ UCAN refers to an annual survey of its members that suggests that cellular rates are "an increasingly important issue." In the context of UCAN -- an organization whose entire raison d' etre is to complain about utility rates -- this lukewarm survey response is practically a vote of confidence.

Two further points merit comment. UCAN/TURN suggests that the churn rate experienced by cellular carriers evidences customer dissatisfaction with cellular services. (UCAN/TURN Comment at p. 4). In fact, as noted in CTIA's Opposition, much of the "churn" represents shifts by customers from one carrier to another. (CTIA Opp. at p. 13). This trend actually evidences the degree of healthy competition between carriers rather than some fundamental dissatisfaction with cellular service altogether.

Second, L.A. County devotes much of its presentation to the CPUC (which it incorporated by reference in its FCC Comment) to asking that it be given cellular rate and service preferences as some sort of recompense for the valuable license which the federal government has given to cellular carriers. Interestingly, L.A. County points to Florida as an example of what they would like to see in California. Florida does not regulate the provision of cellular service.

V. Preferential Treatment of Non-Cellular Carriers Will Lead To Regulatory Disparity

The fourth group of Commenters (AMTA, Johnson, Mtel, Nextel, Paging Network and PCIA) (hereinafter "non-cellular CMRS providers") generally commented that, even if California is permitted to continue regulation of cellular rates, rates of non-cellular CMRS providers should not be regulated. There are several reasons why this suggestion should be rejected.

A. CONGRESS AND THE FCC INTEND TO CREATE A UNIFORM, NATIONWIDE, SEAMLESS REGULATORY FRAMEWORK GOVERNING FUNCTIONALLY EQUIVALENT MOBILE RADIO SERVICES

1. Congress revised Section 332 to promote the development of mobile radio services by establishing regulatory parity for CMRS providers

In the OBR, Congress revised Sections 3(n) and 332 of the Communications Act in order to level the playing field between cellular and other functionally equivalent or substitute mobile services such as traditional and wide-area SMR and Private Carrier Paging, which had previously escaped virtually all regulation. Congress replaced the previously-employed anachronistic categories, private versus public, with two newly defined categories of mobile services: commercial mobile radio service and private mobile radio service ("PMRS").

Congress revised Section 332 because it found that the existing regulatory framework could "impede the continued growth and development of commercial mobile services and deny consumers the protections they need."[16]/ Congress recognized that an even-handed approach to regulation was required to promote investment in mobile services.[17]/ The intent was to

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[16] H.R. Rep. No. 111, 103d Cong., 1st Sess. 260 (1993) ("House Report").

[17] In an implementing order, the Commission stated:

> The continued success of the mobile telecommunications industry is significantly linked to the ongoing flow

create a symmetrical national regulatory framework for mobile services, which, "by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[18]/

In order to create this uniform regulatory framework, Congress re-classified mobile services and preempted state rate and entry regulation of CMRS.[19]/ The aim, it stated, was to "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[20]/ To guide the Commission's implementation of revised Section 332, the legislative history instructs the Commission to "ensure that . . . similar services are accorded similar regulatory treatment."[21]/ The principle of

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> of investment capital into the industry. It thus is essential that our policies promote robust investment in mobile services. In this Order, we try to promote this goal by ensuring that regulation is perceived by the investment community as a positive factor that creates incentives for investment in the development of valuable communications services--rather than as a burden standing in the way of entrepreneurial opportunities--and by establishing a stable, predictable regulatory environment that facilitates prudent business planning.

Second Report and Order at para. 20.

[18] House Report at 260.

[19] See Communications Act, § 332(c).

[20] House Report at 260 (emphases added).

[21] H.R. Rep. No. 213, 103d Cong., 1st Sess. 494 (1993) (Conference Report).

regulatory parity, therefore, guides the Commission's treatment of competing mobile radio services.

2. The FCC recognizes that its mandate is to implement regulatory parity governing similar mobile radio services

The Commission has acknowledged its mandate to bring about regulatory parity: "Our preemption rules will help promote investment in the wireless infrastructure by preventing burdensome and unnecessary state regulatory practices that impede our federal mandate for regulatory parity."[22]/ In interpreting this mandate, the Second Report and Order adopted "as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers by this Order."[23]/ The Commission further stated that its interpretation of the CMRS definition[24]/

> ensures that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations. Success in the marketplace thus should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer

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[22] Second Report and Order at 1421.

[23] Id. at 1418 (emphasis added).

[24] The Commission elsewhere concluded that CMRS providers include all cellular licensees, most common carrier paging licensees, all wide-area SMR providers, and most SMR providers. Id. at 1468.